IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

MFA.No. 1245 of 2001(A)

WCC.106/1997 of WORKMEN'S COMPENSATION COURT, KANNUR

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APPELLANT: 2nd Opposite Party

UNITED INDIA INSURANCE COMPANY LTD., KALPETTA,
NOW REPRESENTED BY ITS ASSISTANT MANAGER,
THIRD PARTY CLAIMS CELL, KOCHI - 16.

BY ADV. SRI.MATHEWS JACOB
SRI.M.J.XAVIER THOMAS

RESPONDENTS: APPLICANT & 1ST OPPOSITE PARTY.

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1. KUNHAMMAD, S/O.KUNHABDULLA, KEERI HOUSE,
KAITHAKKAL, CHERUKATTOOR P.O.,
MANANTHAVADY.

2. R.ABDULLA, S/O.SOOPY, MUGAL JEWELLERY, PANAMARAM.

BY ADV. SRI.N.J.ANTONY

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 27/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No. 1245 OF 2001

Dated this the 27th June, 2007.

J U D G M E N T

The second opposite party who is the Insurer in W.C.C.No.106/1997, on the file of the Commissioner for Workmen's Compensation Court, Kannur, is the appellant. The appellant has filed this appeal challenging an order passed by the Deputy Labour Commissioner, by which, the appellant was directed to pay an amount of Rs.95,423/= with interest at the rate of 12% to the first respondent, applicant. The first respondent sustained injuries in a motor vehicle accident, which took place at about 10.30 a.m., on 30.3.1997. Admittedly, the first respondent was riding the motor cycle bearing Registration No.KL.12/7354, owned by the second respondent. It met with an accident. The first respondent filed a petition under Section 22 of the Workmen's Compensation Act, contending that he was an employee of the second respondent, at the time of accident, and since the injuries sustained by him is an employment injury, he is entitled to get an amount of Rs.1,50,000/= as compensation.

2. The second respondent entered appearance and filed a written statement admitting the employer-employee relationship. The insurer though admitted the existence of a valid policy, denied its liability. It was contented that there was collusion between the applicant and respondents 1 and 2. It was contented that the first respondent had never worked as a workman under the second respondent. The appellant produced Ext.R1 to show that the first respondent was a ration shop owner and not an employee of the second respondent. The first respondent produced Ext.A5, the disability certificate, issued by the Associate Professor of Surgery, Medical College Hospital, Kozhikode, to the effect that the disability of the first respondent appears to be permanent and may seriously affect the profession of a man involved in running a ration and other shop engagements. The professional disability was fixed as 30%. The appellant filed a petition to direct the first respondent to subject himself for examination by a medical board. The Deputy Labour Commissioner dismissed that application and accepted the certificate issued by the Doctor. Neither the applicant nor the Doctor were examined. The first respondent also did not go to box and gave evidence. Solely relying on the admission made by the second respondent, it was held that the first respondent was a workman of the

second respondent. The Deputy Labour Commissioner did not consider the relevancy of Ext.R1 produced by the appellant. He failed to note that even in the disability certificate produced by the first respondent, he was described as a ration shop dealer.

3. The learned counsel appearing for the appellant has argued that there must be evidence to show the actual employer-employee relationship. He further argued that it is very difficult to believe that a ration shop dealer will be working as a workman of a jewelery shop. What exactly was the nature of work and how he happened to ride the motor cycle of the second respondent was not stated. The Deputy Labour Commissioner ought not have allowed the application, and he should have considered whether there exist employer-employee relationship between the first and second respondents. The prayer for subjecting the first respondent for medical examination by a medical board was also dismissed without any valid evidence. Since the matter was disposed of without resolving real controversy as to whether there exists an employer-employee relationship, and also without considering the request to adduce evidence, I have no other option, but to set aside the judgment

passed by the Commissioner for Workman's compensation, in W.C.C.No.106/97, and remand the case back to that court for fresh disposal, in accordance with law.

4. In the result, the appeal is allowed. The judgment passed by the Commissioner for Workman's compensation, in W.C.C.No.106/97, is set aside. W.C.C.No.106/1997 is remanded back to its file, with a direction to the Deputy Labour Commissioner to consider and dispose of the same afresh, in accordance with law. It is open to all parties to adduce further evidence, if so advised.

Being an old case, the Deputy Labour Commissioner shall make every endeavor to dispose of the case, as expeditiously as possible, at any rate, within five months from the date of receipt of a copy of this judgment.

C.M.P.No.8523 of 2001 in M.F.A.No.1245 of 2001 shall stand dismissed.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No. 1245 of 2001

J U D G M E N T

Dated: 27th June, 2007.